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in all cases awaiting decision, in which the awards had been drafted and discussed by the Tribunal prior to the outbreak of the war, and pursuant to this arrangement the awards⁵ of the Tribunal in the cases of *Coquitlam*, *Home Missionary Society*, *Tattler* and *Hemming* were announced by M. Fromageot at Paris on December 18, 1920. It is expected that awards in several of the other cases which were under discussion by the Tribunal in 1914 will shortly be announced under this same arrangement.

Arrangements are in contemplation between the two Governments for a meeting of the Tribunal for the purpose of preparing the awards in the other cases already argued and for hearing the remaining cases included in the above-mentioned schedule of claims.

The resumption of the work of the American-British Claims Arbitration Tribunal is a welcome indication of the progress toward normalcy in the settlement of international controversies by the rule of law and justice in place of force and politics.

CHANDLER P. ANDERSON.

THE AALAND ISLANDS QUESTION

The submission to the League of Nations of the Aaland Islands dispute between Sweden and Finland, has been given considerable publicity for purposes of propaganda, but the interesting problems involved in the dispute have been given but slight attention.

The main uncontested facts in the case are as follows: The Aaland Islands are situated at the entrance of the Gulf of Bothnia, and are separated from Sweden by about 50 kilometers, and from Finland by about 70. They are about 300 in number, with an area of approximately 1,442 square kilometers, and a population of 25,000 inhabitants, almost entirely Swedish. The islands contain many excellent harbors for big ships.

Until the year 1809, except for a short period of Russian domination at the beginning of the Eighteenth Century, the Aaland Islands were part of the Kingdom of Sweden. They were then conquered by Russia and incorporated, with Finland, into the Russian Empire. By the Treaty of Paris in 1856 the islands were "demilitarized," that is to say, in the interests of Sweden and other nations of Europe, it was forbidden to fortify these strategic islands. Russia saw fit, however, during the recent war to fortify them without protest from either her allies or adversaries.

Finland declared its independence as a nation on the 15th of November, 1917; was formally recognized by the Soviet Government of Russia on the 4th of January, 1918, and by the Swedish Government on the same date. It appears that as early as the 20th of August, 1917, delegates of the communes of the Aaland Islands assembled at Finstrom and decided

⁵ Printed at page 292.

to bring to the notice of the Swedish Government and Parliament that the population of the islands for special reasons keenly desired that the islands should be reunited to the Kingdom of Sweden. This resolution was communicated to the Swedish Government on the 27th of November. By subsequent plebiscites about 95 per cent. of the population declared in favor of reunion with Sweden. A deputation was received by the King of Sweden on the 3rd of February, 1918. A fact of much significance was the landing of Swedish troops on the islands at the request of the inhabitants to secure the removal of the Russian troops who would not depart unless the Finnish "White" troops also left at the same time. The Swedish troops then withdrew likewise.

Already on the 16th of January, 1918, the King of Sweden, in the speech from the throne to the Rikstag, had expressed his conviction that the independence of Finland would facilitate a satisfactory settlement of the Aaland Islands question. After private negotiations, Sweden formally requested the Government of Finland in November, 1918, to arrange for a plebiscite to decide the political fate of the islands. Such a plebiscite would naturally have been almost unanimously for Sweden, and was refused by Finland on the general ground that it is essential to the economic and the military security of Finland to retain the islands. The Finnish Government furthermore declared that: "In opposing the Swedish Government's proposal to submit the question of the future status of the islands to a plebiscite of the population, [it] is following the principles according to which several territorial questions were decided by the Peace Conference, in cases of conflict, as here, between the wishes of a minority and the economic and military security of a nation."¹

The question was brought to the attention of the Council of the League of Nations by the inhabitants of the Aaland Islands and by the Swedish Government, and the following resolution was unanimously adopted by the Council with the assent of Sweden and Finland on the 12th of July, 1920:

An International Commission of three jurists shall be appointed for the purpose of submitting to the Council, with the least possible delay, their opinion on the following points:

(1) Whether, within the meaning of paragraph 8 of Article 15 of the Covenant, the case presented by Sweden to the Council with reference to the Aaland Islands deals with a question that should, according to International Law, be entirely left to the domestic jurisdiction of Finland.

(2) The present position with regard to international obligations concerning the demilitarization of the Aaland Islands.²

This commission was organized as follows: Professor F. Larnaude, Dean of the Faculty of Law at Paris, President; Professor A. Struycken,

¹ *Official Journal, League of Nations*, Special Supplement No. 1, August, 1920, p. 5.

² *Ibid.*, No. 3, October, 1920.

Councillor of State of the Kingdom of the Netherlands; and Professor Max Huber, Legal Advisor of the Swiss Political Department. M. G. Kaeckenbeeck, of the Legal Section of the Secretariat of the League of Nations, was appointed secretary of the commission.

The conclusions of the commission, announced on the 5th of September, 1920, after hearing the statements of both parties to the dispute were as follows:

(1) The dispute between Sweden and Finland does not refer to a definitive established political situation, depending exclusively upon the territorial sovereignty of a State.

(2) On the contrary, the dispute arose from a *de facto* situation caused by the political transformation of the Aaland Islands, which transformation was caused by and originated in the separatist movement among the inhabitants, who invoked the principle of national self-determination, and certain military events which accompanied and followed the separation of Finland from the Russian Empire at a time when Finland had not yet acquired the character of a definitively constituted State.

(3) It follows from the above that the dispute does not refer to a question which is left by international law to the domestic jurisdiction of Finland.

(4) The Council of the League of Nations, therefore, is competent, under paragraph 4 of Article 15, to make any recommendations which it deems just and proper in the case.³

To summarize this decision, it merely amounts to a statement that there is no absolute right of self-determination; that the fate of the Aaland Islands, as in the case of the Trentino or Poland, is to be determined ultimately by the concert of Powers. The commission remarks, concerning the recognition of new States during the late war, that:

In many cases they were only recognitions of peoples or nations, sometimes, even, mere recognitions of Governments. The precise determination of the territorial status of these States was usually left to the great diplomatic reconstruction of Europe which would follow the conclusion of peace, just as, in some cases, were certain peculiarities of their political constitution and legislation, especially concerning the protection of minorities, which were thus reserved for international settlement.⁴

On the general question of national self-determination, the commission appears to incline to the point of view of Finland when it says:

The fact must, however, not be lost sight of that the principle that nations must have the right of self-determination is not the only one to be taken into account. Even though it be regarded as the most important of the principles governing the formation of States, geographical, economic and other similar considerations may put obstacles in the way of its complete recognition. Under such circumstances, a solution in the nature of a compromise, based on an extensive grant of liberty to minorities, may appear necessary according to international legal conception and may even be dictated by the interests of peace.⁵

Though the commission seems to hold that revolution and insurgency is solely of domestic concern (*idem.*, p. 6), it pronounced the following

³ *Idem.*, p. 14.

⁴ *Idem.*, p. 8.

⁵ *Idem.*, p. 6.

extraordinary *obiter dictum*, which has a portentous bearing on the question of the right of the League of Nations to intervene in such abnormal situations as that now existing in Ireland:

The Commission . . . does not give an opinion concerning the question as to whether a manifest and continued abuse of sovereign power, to the detriment of a section of the population of a State, would, if such circumstances arose, give to an international dispute, arising therefrom, such a character that its object should be considered as one which is not confined to the domestic jurisdiction of the State concerned, but comes within the sphere of action of the League of Nations.⁶

In regard to the question of the demilitarization of the Aaland Islands, the commission decided that:

(1) The provisions of the Convention and Treaty of Peace of 30th March, 1856, concerning the demilitarization of the Aaland Islands are still in force.

(2) These provisions were laid down in European interests. They constituted a special international status relating to military considerations for the Aaland Islands. It follows that until these provisions are duly replaced by others, every State interested has the right to insist upon compliance with them. It also follows that any State in possession of the Islands must conform to the obligations binding upon it arising out of the system of demilitarization established by these provisions.⁷

In denying the claim put forward by Sweden that the convention of 1856 definitely created a "real servitude" attaching to the Aaland Islands, the commission went so far as to question in general the existence of international servitudes and cited in support of this the decision in the North Atlantic Fisheries Arbitration. The commission would seem to have failed at least to appreciate the nature of a "negative servitude" such as the demilitarization of these islands would appear to be. However squeamish one may be concerning the use of the term *servitude*, with its unpleasant etymological connotation, there exist peculiar international situations constituting a distinct impairment of sovereignty which must be given a special classification. As Oppenheim remarked: "It is hardly to be expected that this opinion of the Court (Fisheries Arbitration) will induce theory and practice to drop the conception of State servitudes which is of great value."⁸

In reaching its conclusion that the special status of the Aaland Islands was of general European concern and not merely a domestic concern of Finland, the commission took note of the fact that the Soviet Government notified the Council of the League of Nations on the 3rd of October, 1919, and the 1st of July, 1920, that no decision concerning the disposition of the Aaland Islands could have any value unless Russia gave its assent.

It will be seen from the foregoing summary that while the main conclusion reached by the commission was inevitable and on the whole *pro*

⁶ *Idem.*, p. 5.

⁷ *Idem.*, p. 19.

⁸ International Law, 3d ed., p. 365.

forma, its report adumbrated matters of very great importance from the point of view of international law. It therefore warrants particular consideration and study.

PHILIP MARSHALL BROWN.

SAKUYEI TAKAHASHI

1865—1920

Within the memory of men now living, Japan opened its doors to Western civilization, and within the memory of those who are yet doing the world's work, Japan was admitted to full membership in the Society of Nations. Yet, short as is the time, Japan has produced, and unfortunately lost, an international lawyer of universal repute.

Sakuyei Takahashi—for the reference is to him—died on September 12, 1920, in the fifty-fifth year of his eventful life and useful career. His titles to respect were many and he is an exception to the rule that “a prophet is not without honor, save in his own country.” He was Professor of International Law in the Imperial University at Tokyo; member of the House of Peers of the Imperial Diet of Japan; member of the Academy of Japan. He was the moving spirit of the Japanese Society of International Law, and was Editor in Chief of the *Japanese Review of International Law*.

He was also an Associate of the Institute of International Law.

Armed with the learning of the West, Mr. Takahashi possessed the poise and balance which come from experience with affairs. For example, in the War of 1894-5 between China and Japan, he was legal advisor to the admiral commanding the Japanese fleet. In the Russo-Japanese War of 1904-5, he was a member of the Legal Committee in the Department for Foreign Affairs. Therefore, his *Cases on International Law during the Chino-Japanese War*, published in English in 1899, and his *International Law Applied to the Russo-Japanese War*, with the decisions of the Japanese Prize Courts, published in 1908, have the value attaching to the work of a man who is not only learned in theory, but is chastened by practice.

To such an extent was sound learning combined with a capacity for business appreciated, that in the Okuma Cabinet he was appointed Director of the Bureau of Legislation, a governmental department charged with the work of drafting laws to be submitted to the Imperial Diet as measures of the government.

In him, the East and the West met and mingled; and nothing could be more delicate on Mr. Takahashi's part, or more interesting to the publicists of the Western World than dating, as he did, his *International Law Applied to the Russo-Japanese War*, “On the 10th of April, 1908, the 325th Anniversary of Hugo Grotius' birthday.”

JAMES BROWN SCOTT.